

(3) Include a copy of the initial written request, a copy of the letter of denial, and the requester's reasons for appealing the denial; and

(4) Be addressed to the Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451.

(c) The 30-day period for appealing a denial begins on the date of the denial letter. The 30-day limitation may be waived by the Agency for good cause shown. The Agency will consider any request closed if, within 30 working days after a complete or partial denial, the requester fails to appeal the denial.

§ 602.41 Decision on appeal.

(a) Review and final determination on an appeal shall be made by the Deputy Director.

(b) [Reserved]

(c) Review of an appeal shall be made on the submitted record. No personal appearance, oral argument, or hearing shall be permitted.

(d) The final determination on an appeal from a denial shall be made by the Deputy Director within 20 working days of receipt of the appeal by the Agency.

(e) If the final determination is to release the withheld material, the requester will be notified immediately and the material will be forwarded promptly in accordance with the procedure described in § 602.16 for notifications of initial determinations.

(f) If the final determination is to continue to withhold material in whole or in part, the requester will be notified immediately of the determination, the reasons therefore, and the right to judicial review.

(g) All decisions will be indexed and available for inspection and copying in the same manner as other Agency final orders and opinions, if any, under 5 U.S.C. 552(a)(2).

Subpart F—Annual report to the Congress

§ 602.50 Requirements for annual report.

(a) On or before March 1 of each calendar year, ACDA shall submit a report covering the preceding calendar year to the Speaker of the House of

Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(1) The number of determinations made by ACDA not to comply with requests for records made to the Agency under this part and the reasons for each such determination;

(2) The number of appeals made by persons under subpart E of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of this part 602 and any other rule or regulation made by ACDA regarding 5 U.S.C. 552;

(6) A copy of the fee schedule and the total amount of fees collected by ACDA for making records available under this part; and

(7) such other information as indicates efforts to administer fully this part.

(b) The FOIA Officer will be responsible for preparing the report for review and submission to the Congress.

PART 603—PRIVACY ACT POLICY AND PROCEDURES

Sec.

603.1 Purpose and scope.

603.2 Definitions.

603.3 Policy.

603.4 Requests for determination of existence of records.

603.5 Requests for disclosure to an individual of records pertaining to the individual.

603.6 Requests for amendment of records.

603.7 Appeals from denials of requests.

603.8 Exemptions.

603.9 New and amended systems of records.

603.10 Fees.

§ 603.1

AUTHORITY: 5 U.S.C. 552a; 22 U.S.C. 2581; and 31 U.S.C. 9701.

SOURCE: 61 FR 51593, Oct. 3, 1996, unless otherwise noted.

§ 603.1 Purpose and scope.

This part 603 contains the regulations of the U.S. Arms Control and Disarmament Agency implementing the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. In addition to containing internal policies and procedures, these regulations set forth procedures whereby an individual can determine if a system of records maintained by the Agency contains records pertaining to the individual and can request disclosure and amendment of such records. These regulations also set forth the bases for denying amendment requests and the procedures for appealing such denials.

§ 603.2 Definitions.

As used in this part:

(a) *Act* means the Privacy Act of 1974, 5 U.S.C. 552a.

(b) *ACDA* and *Agency* mean the U.S. Arms Control and Disarmament Agency.

(c) *Privacy Act Officer* means the Agency official who receives and acts upon inquiries, requests for access and requests for amendment.

(d) *Deputy Director* means the Deputy Director of the Agency.

(e) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(f) *Maintain* includes maintain, collect, use, or disseminate;

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the name of, or the identifying number, symbol, or other identification particularly assigned to, the individual, such as a finger or voice print or a photograph;

(h) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, sym-

22 CFR Ch. VI (4-1-98 Edition))

bol, or other identification particularly assigned to the individual;

(i) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13 U.S.C.; and

(j) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 603.3 Policy.

(a) It is the policy of the Agency that only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute or by executive order of the President shall be maintained in an Agency record. No information about the political or religious beliefs and activities of an individual will be maintained within such records unless specifically authorized by statute or by the subject individual, or unless pertinent to and within the scope of a law enforcement activity.

(b) The Agency will not disclose any record that is contained in a system of records to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record is:

(1) To those officers and employees of the Agency who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act, as amended (5 U.S.C. 552);

(3) For a routine use, notice of which has been published in accordance with the Act;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 U.S.C.;

(5) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is

to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his/her designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Agency that maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(c) Except for disclosures of information to Agency employees having need for the information in the official performance of their duties or required under the provisions of the Freedom of Information Act, an accurate accounting of each disclosure will be made and retained for five years after the disclosure or for the life of the record, whichever is longer. The accounting will include the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. Each such disclosure, unless made to agencies engaged in law enforcement activities in accordance with paragraph (b)(7) of

this section, will be made available to the individual upon request.

(d) To the greatest extent practicable, information that may result in an adverse determination about an individual shall be collected from that individual, and the individual will be informed of the purposes for which the information will be used and any rights, benefits, and obligations with respect to supplying the data.

(e) The Agency shall ensure that all records that are used by the Agency to make a determination about any individual are maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual. Whenever information about an individual contained in an Agency record is used or disclosed, the custodian of the system of records in which the record is located will make every effort to ensure that it is accurate, relevant, timely and complete.

(f) The Agency shall establish appropriate administrative, technical, and physical safeguards to ensure that records are disclosed only to those who are authorized to have access to them and to protect against any anticipated threats or hazards to their security or integrity that would result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(g) Agency records pertaining to an individual shall be made available to that individual to the greatest extent possible.

(h) No lists of names and addresses will be rented or sold unless such action is specifically authorized by law, provided that names and addresses otherwise permitted to be made public will not necessarily be withheld when requested.

(i) All requests for information under the Privacy Act received by the Agency will be acted upon as promptly as possible.

§603.4 Requests for determination of existence of records.

Any individual desiring to know whether any system of records maintained by the Agency contains a record pertaining to the individual shall send a written request to the Privacy Act

Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. All requests for determination of the existence of records should include sufficient information to identify the system of records, such as its name or FEDERAL REGISTER identifier number if known, in addition to such identifying information as the individual's name and date of birth.

§603.5 Requests for disclosure to an individual of records pertaining to the individual.

(a) An individual desiring access to or copies of records maintained by the Agency shall send a written request to the Privacy Act Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. All requests for disclosure to an individual of records pertaining to that individual should include sufficient information to identify the record or system of records such as its name or FEDERAL REGISTER identifier number if known, in addition to such identifying information as the individual's name and date of birth.

(b)(1) Except as provided in paragraph (b)(2) of this section:

(i) If the individual making a written request is not personally known to the Privacy Act Officer or to other Agency personnel processing the request, the written request must include satisfactory evidence that the requester is in fact the individual to whom the requested records pertain. For this purpose, the Agency normally will be satisfied by the receipt of the requester's statement of identity made under penalty of perjury.

(ii) If the individual making a request in person is not personally known to the Privacy Act Officer or to other Agency personnel processing the request, the requester must present two identification documents (at least one of which must bear the requester's picture) containing the individual's signature and other suitable evidence of identity. Examples of acceptable evidence are a driver's license, passport, employee identification card, or military identification card.

(2) Evidence that the requester is in fact the individual to whom the re-

quested records pertain is not required for information that would be required to be made available to a third party under the Freedom of Information Act (5 U.S.C. 552).

(c)(1) Access to or copies of records requested pursuant to this section shall be furnished except as provided in paragraph (c)(3) of this section:

(i) To an individual making a request in person, upon verification of personal identity as required in paragraph (b) of this section, to that individual, and if the individual is accompanied by any other person, upon the individual's request, to that person, except that the Agency may require the individual to furnish a written statement authorizing disclosure of the individual's record in the presence of the accompanying person.

(ii) To an authorized representative or designee of an individual, if the individual has provided verification of personal identity as required in paragraph (b) of this section, and submits a signed, notarized statement authorizing and consenting to access or disclosure to the representative or designee.

(iii) To a physician authorized by a signed, notarized statement made by the individual making the request, in the event that the records requested are medical records of such a nature that the Privacy Act Officer has determined that the release of such medical information directly to the requester could have an adverse effect on the requester. The individual making the request must also provide verification of personal identity as required in paragraph (b) of this section.

(2) Access to records or copies of records requested shall be furnished as promptly as possible.

(3) Access to or copies of records requested pursuant to this section shall not be granted if:

(i) The individual making the request does not comply with the requirements for verification of personal identity as required in paragraph (b) of this section; or

(ii) The records are exempt from disclosure pursuant to §603.8.

§ 603.6 Requests for amendment of records.

(a) An individual may request amendment of a record pertaining to that individual by sending a written request to the Privacy Act Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. The request should identify the record sought to be amended, specify the precise nature of the requested amendment, and state why the requester believes that the record is not accurate, relevant, timely or complete.

(b) Not later than ten (10) days after receipt of such request (excluding Saturdays, Sundays and legal holidays), the Privacy Act Officer shall promptly:

(1) Make any correction of any portion of the record pertaining to the individual which the Agency considers appropriate; and

(2) Inform the requester in writing of the action taken by the Agency, of the reason for refusing to comply with any portion of the request, and of the procedures established by the Agency to consider requests for review of such refusals.

(c) The Privacy Act Officer will refuse to amend a record if the information therein is deemed by the Agency:

(1) To be relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute or by executive order of the President; and

(2) To be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual; and

(3) Not to describe how the individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained.

(d) When the Privacy Act Officer agrees to amend a record, written notice that the record has been amended and the substance of the amendment will be sent to the last known address of all previous recipients of that record shown in Agency's Privacy Act Requests File.

§ 603.7 Appeals from denials of requests.

(a) An individual who disagrees with the refusal of the Privacy Act Officer to disclose or amend a record may request a review of such refusal within 30 days of receipt of notice of the refusal. Such request should be addressed to the Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451, and should include a copy of the written request that was refused, a copy of the denial complained of, and reasons for appeal from the denial.

(b) Review shall be made by the Deputy Director on the submitted record. No personal appearance, oral argument, or hearing shall be permitted.

(c) Review will be completed and a final determination made not later than 30 days (excluding Saturdays, Sundays and legal holidays) from the date on which the request for such review is received. This 30-day limitation may be extended, at the discretion of the Agency for good cause shown. The requester will be notified in writing of the Agency's final determination.

(d) If, after completion of the review, the Deputy Director also refuses to disclose or amend the record as requested, the notice to the individual will advise the individual of the right to file with the agency a concise statement setting forth the reasons for disagreement with this refusal.

(e) When an individual has filed with the Agency a statement of disagreement following a refusal to amend the record as requested, the Agency will clearly note that portion of the record that is disputed and will send copies of the statement of disagreement to the last known address of all previous recipients of the disputed record shown in the Agency's Privacy Act Requests File.

§ 603.8 Exemptions.

(a) As authorized by the Act, the following categories of records are hereby exempted from the requirements of sections (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a, and will not be disclosed to the individuals to which they pertain:

(1) System of Records of ACDA-4—Statements by Principals during the

Strategic Arms Limitation Talks, Mutual Balanced Force Reduction negotiations, and the Standing Consultative Committee. This system contains information classified pursuant to Executive Order 12958 that is exempt from disclosure by the Act (5 U.S.C. 552a(k)(1)) in that disclosure could damage national security.

(2) System of Records ACDA-3—Security Records. This system contains investigatory material compiled for law enforcement purposes which is exempt from disclosure by the Act (5 U.S.C. 552a(k)(2)): *Provided, however*, that if any individual is denied any right, privilege, or benefit to which the individual would otherwise be entitled by Federal law, or for which the individual would otherwise be eligible, as a result of the maintenance of such material, such material will be provided to such individual, except to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, if furnished to the Government prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(3) Systems of Records ACDA-3—Security Records. This system contains investigatory materials compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information which is exempt from disclosure by the Act (5 U.S.C. 552a(k)(5)), but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, if furnished to the Government prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(b) Nothing in these regulations shall be construed to allow an individual access to:

(1) Any information compiled in reasonable anticipation of a civil action or proceeding; or

(2) Testing or examination material used solely to determine individual

qualification for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

§603.9 New and amended systems of records.

(a) The Agency shall provide adequate advance notice to Congress and to the Office of Management and Budget of any proposal to establish or alter any system of records. Such notice shall be in a form consistent with guidance on content, format and timing issued by the Office of Management and Budget.

(b) The Agency shall publish by August 31 of each year in the FEDERAL REGISTER a notice of the existence and character of each system of records maintained by the Agency. Such notice shall be consistent with guidance on format contained in the Act and issued by the General Services Administration. At least 30 days before any new or changed routine use of records contained within a system of records can be made, the Agency shall publish notice of such new or changed use in the FEDERAL REGISTER.

§603.10 Fees.

Fees to be charged in responding to requests under the Privacy Act shall be, to the extent permitted by paragraph (f)(5) of the Act, the rates established in title 22 CFR 602.20 for responding to requests under the Freedom of Information Act.

PART 604—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

604.1 Definitions.

604.2 Scope of regulations.

604.3 Exceptions.

604.4 Administrative claim; when presented.

604.5 Administrative claim; who may file.

604.6 Administrative claim; evidence and information to be submitted.

604.7 Authority to adjust, determine, compromise and settle.

604.8 Limitation on Agency authority.

604.9 Referral to the Department of Justice.

604.10 Investigation and examination.

604.11 Limitations.

604.12 Signatures.